



Michigan Counseling Association

Qualified Mental Health Professionals in Juvenile Justice Michigan Counseling Association House Judiciary Committee

Chairman Meadows and Members of the Michigan House of Representatives Judiciary Committee:

It is important to provide guidance to jurists in determining a juvenile's competence to stand trial and to restore a juvenile to competence (if possible) so that he or she may proceed with a trial. Much work has gone into the legislation before the committee today to create a system that provides for highly effective and standardized competency evaluations and that recognizes judicial discretion. The end result is a system that is more just for children and better for law enforcement and defense attorneys.

The Michigan Counseling Association has reviewed the bills before the committee, HB 5175 and 5482, 5483, 5485 and 5486, The newest definitions of "qualified examiner" and "qualified restoration provider" notwithstanding, the legislation before the committee today provides sufficient guidance and reflects responsiveness to current issues in the juvenile justice system. The bills do this by:

- Establishing specific guidelines about types of assessment areas and sources of information needed for comprehensive forensic evaluation. Because the language reflects areas needed to be assessed (i.e., cognitive development, mental status) rather than identifying specific types of assessment instruments, it is fluid enough to change as new testing instruments are developed and research about specific instruments continues to grow.
- Establishing credentialing guidelines for evaluators that clearly articulate qualifications (qualified mental health professionals, specialized training). This is consistent with national standards that emphasize specific training and experience in this area .
- Recognizing that it is not academic degree that constitutes qualifications of forensic mental health professionals but rather a combination of specific training, experience, and academic degree that constitutes such. By doing so, this legislation recognizes that no specific advanced mental health degree (counseling, psychiatry, psychology) requires specific coursework in forensic evaluation and as such, no one discipline has an advantage over another with regard to this type of evaluation. Further, by fully recognizing this is consistent with national standards as well as with related Michigan legislation that is based upon broad and inclusive definitions of qualified mental health professionals (i.e., Master's degree or doctorate in counseling, clinical psychology, psychiatry).

- Through the creation of this legislation, access to fitness evaluations for youthful offenders is significantly expanded and options available to jurists in locating and identifying qualified evaluators are significantly increased. Both of these issues contribute to a more responsive juvenile justice system that puts the best interest of youth, families, and the community first.
- Expanding the pool of qualified evaluators by establishing evaluator qualifications that emphasize training and experience rather than a specific degree guards Michigan against potential civil rights issues that may evolve due to restricting forensic evaluation to a small, homogeneous group of professionals. Because the juvenile justice system nationally, and in Michigan, specifically, continues to be challenged by disproportionate racial minority representation, ensuring a broad and heterogeneous group of professional evaluators may mitigate or act against this issue.
- The new criteria establishing a specialized certificate in juvenile forensics for certain mental health is difficult for the MCA to support. Given, as stated above, that no specific advanced mental health degree (i.e., counseling, psychology, psychiatry, social work) currently requires specific coursework in forensic evaluation, the special certification requirement appears to be arbitrarily applied. Ultimately if psychiatrists and doctoral-level psychologists were to be exempted from acquiring qualified mental health examiner initially to ensure that a gap in services was not created while rolling out these new requirements, MCA is hopeful that all groups would have to obtain this special certification. To do otherwise and simply permit professionals without having established minimal credentials in forensic evaluation would simply prolong the state's efforts to implement a forensic evaluation system that is indeed evidence-based and just. However, as a measure of moving these bills forward, MCA is willing to support this provision at this time. The MCA still maintains that no group should be singled-out since there is no justification for such action, and that either all groups are required to qualify for this certification to ensure compliance with minimal standards in forensic evaluation, or that none do, and the bills return to a previous substitute.

There are still many concerns with this legislation. Some have been or will be articulated by some of the other groups here today. From the Michigan Counseling Association's perspective, there are two issues that still require attention:

- There is no resolution to the problem of the children who fall through the proverbial cracks. There is a population of juveniles who cannot be restored to competence but also cannot be incarcerated indefinitely. Despite the gains this legislation makes, without a solution to this problem, the judicial system is still burdened with this costly, unjust dilemma.
- The age of presumptive incompetence is a major point of difference among many groups involved. The Michigan Counseling Association's position is that we would support legislation presuming incompetency for children under the age of 11 in order to move this forward,

however, we would argue that the age of incompetence should be older than 11 (i.e., 13 years). At the same time, we understand that there are groups that support an older age of incompetence and others that propose an even lower age than 11 years. Conversations on this subject are certainly not at a stand-still, but more work needs to be done in order for all sides of this issue to understand what best serves the justice system.

Thank you for the opportunity to provide comment today, and the Michigan Counseling Association looks forward to continuing work on this subject.